

Vera v 302 Broadway LLC

2025 NY Slip Op 35202(U)

December 31, 2025

Supreme Court, Kings County

Docket Number: Index No. 525674/2019

Judge: Richard J. Montelione

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This opinion is uncorrected and not selected for official publication.

At IAS Part 99 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 31st day of December 2025.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 99

**DECISION
and
ORDER**

-----X
VICTOR ALEJANDRO PAZOS VERA,

Plaintiff,

Index No.: 525674/2019
Mot. Seq. Nos.: 8 & 9

-against-

302 BROADWAY LLC, AVIEW BUILDERS INC.,
and STREKE CORP.,

Defendants.

-----X
302 BROADWAY LLC, AVIEW BUILDERS INC.,

Third-Party Plaintiffs,

-against-

STRUCTURE SUPREME LLC dba
INTERNATIONAL CONCRETE CORP.,

Third-Party Defendant.

-----X
After oral argument, the following papers were read on this motion pursuant to CPLR 2219(a):

<u>Papers</u>	NYSCEF DOC. #
Plaintiff's Notice of Motion/Affirmation in Support/Exhibits 1-17/Memorandum of Law(MS#8)	133-152
Third-Party Defendant Structure... 's Opposition Affirmation/Statement of Material Facts/Exhibits A-W/Memorandum of Law (MS#8)	201-227
Defendants' Opposition Affirmation/Exhibits A-J/Memorandum of Law (MS#8)	228-239
Plaintiff's Affirmation in Reply(MS#8)	249
Defendants' Notice of Motion/Affirmation in Support/Exhibits A-N/Memorandum of Law(MS#9)	170-186

MONTELIONE, RICHARD J., J.

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This tort action was commenced by filing the Summons and Complaint on November 24, 2019, alleging, inter alia, that plaintiff Victor Alejandro Pazos Vera was working at a construction site on property owned and operated by defendant 302 Broadway LLC (302 Broadway); that defendant 302 Broadway retained general contractor defendant Aview Builders Inc (Aview Builders) to provide construction services at 302 Broadway, Brooklyn, New York (Premises); and that non-party International Concrete Corp. (International Concrete) was also retained to provide work, labor and/or services at the Premises. (NYSCEF # 1). Plaintiff was employed as a laborer/carpenter for International Concrete. (Verified Bill of Particulars, ¶ 23, NYSCEF # 211; and Verified Bill of Particulars, ¶ 23[B]& [C], NYSCEF # 212). Plaintiff claims that while working at the Premises, he was “injured when construction material fell from a height and struck plaintiff”. (Complaint at ¶ 32, NYSCEF # 1). Issue was joined by the defendants filing their Verified Answer on December 1, 2020. (NYSCEF # 17).

On August 11, 2021, defendants filed a third-party complaint against Structure Supreme LLC dba International Concrete Corp. (International Concrete). (NYSCEF # 27). Defendants third-party plaintiffs allege that while they have denied their liability as to plaintiff, they are none-the-less “exposed to damage by reason of possible verdict or judgment.” (*Id.* at ¶ 12) Defendants third-party plaintiffs seek common law indemnification, contribution, contractual indemnity and allege breach of agreement to secure liability insurance as against International Concrete. (NYSCEF # 27). Third-party defendant International Concrete filed its Answer to Third-Party Complaint on September 14, 2021. (NYSCEF # 34).

By Order dated June 2, 2022, and entered on June 6, 2022 (Montelione, J.), plaintiff was granted leave to serve and file a supplemental summons and amended complaint adding Strekte Corp. (Strekte) as a party defendant. (NYSCEF # 56). Plaintiff’s Amended Complaint alleges causes of action for negligence and violations of Labor Law §§ 200, 240(1) and 241(6) and Rule 23 of the NYS Industrial Code. (*Id.*)

On February 15, 2023, a default judgment order was granted against defendant Strekte, and entered on February 21, 2023 (Montelione, J.). (NYSCEF #74)

Plaintiff now moves pursuant to CPLR § 3212 (MS# 8), for summary judgment in his favor as to plaintiff’s Labor Law § 240(1) cause of action (scaffolding and other devices for the proper protection for employees). Defendants 302 Broadway, Aview Builders and third-party defendant International Concrete oppose.

Defendant 302 Broadway moves pursuant to CPLR § 3212 for summary judgment in its favor as to plaintiff’s Labor Law §§ 200 and 241(6) claims, or alternatively for leave to pursue further discovery of third-party defendant International Concrete and extending its time to supplement/amend this motion for an additional 120 days following the completion of all discovery. (MS# 9). No opposition has been filed.

Motion Sequence # 8

Plaintiff’s motion sequence no. 8 alleges that on November 20, 2019, plaintiff was employed by third-party defendant International Concrete and was performing work at the

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Premises. (Johathan D. Moran, Esq., Affirmation in Support of Plaintiff's Motion for Summary Judgment (Moran Affirmation) ¶ 10, (exhibit citations omitted)). Plaintiff, and a crew of two other workers, (eyewitnesses Jose Enrique Sanchez and Felipe Becerra deposed on January 7, 2021 NYSCEF Doc. Nos. 145 & 146 respectively), were setting up wooden forms on the second floor of the Premises. (Moran Affirmation, ¶ 10) Directly above where plaintiff was working, "another crew of workers was in the process of assembling a wooden deck, which would also be filled with concrete to create a concrete deck to support the next floor up." (*Id.*, at 11) Plaintiff was "crouched down utilizing a drill to assemble a portion of a form his crew was preparing, ... [when,] [s]uddenly, without warning, "a 3'x4' wood piece that was supposed to be secured to the wooden deck 14 feet above detached and fell, striking the Plaintiff in his head. The 3'x4' beam that fell and struck the Plaintiff should have been secured to the deck above." (*Id.*, at ¶¶ 13-15) "Plaintiff sustained serious and permanent injuries to multiple body parts including, but not limited to: cervical spine, lumbar spine, head and brain." (Moran Affirmation ¶ 17) Plaintiff was thereafter transported to Chai Urgent Care. (See Bill of Particulars, NYSCEF Doc. No. 211, p. 20). Counsel for plaintiff argues that plaintiff's Exhibits 1-17 establish a prima facie violation of Labor Law § 240(1).

In opposition thereto, defendants argue that "Plaintiff has failed to demonstrate that the failure of a safety device caused his injury. While Plaintiff maintains that a board fell on his head causing injury, he has not been able to provide any evidence demonstrating where the injury causing object came from." (Aaron T. Smallets, Esq., Affirmation in Opposition To Plaintiff's Partial Motion for Summary Judgment (Smallets Affirmation), NYSCEF Doc. No. 228, ¶¶ 3-4) Further, defendants argue that there are factual disputes that warrant a denial of plaintiff's motion: "there are several versions of how Plaintiff's accident occurred, including testimony that Plaintiff injured himself when he ran into a crossbeam." (*Id.*, at ¶ 6)

Third-party defendant also opposes plaintiff's motion arguing that plaintiff "fails to establish prima facie entitlement to summary judgment as plaintiff failed to establish that his "alleged injuries were caused by a failure to provide 'required safety device' under New York Labor Law § 240(1)." (Thomas P. Corcoran, Esq., Affirmation in Opposition (Corcoran Affirmation), ¶ 16). Plaintiff's motion "fails to establish that the falling piece was the type of object which required additional safety devices to secure. [He] does not claim that he was in the process of raising or hoisting a load which required safety devices." (*Id.*) Further, the affirmation of "construction expert James O'Donoghue ... raises questions of fact as to how plaintiff's injury occurred, whether the activities which Plaintiff were engaged in (forming a column) required the use of any additional safety devices/equipment ... [and he] opines that the two foot long piece of wooden 3"x4" beam is impossible to dislodge from the decking system once it has been locked into place with the nailing of plywood sheeting atop the aluminum beams..." (*Id.*, at ¶ 17) Further, affidavits were submitted that "indicate that all proper and required safety devices utilized in the construction of the deck ... were properly utilized and installed... [and] all contend that dislodging the wooden support beam as plaintiff has alleged would be a physical impossibility." (*Id.*, at ¶¶ 19, 24)

Plaintiff replies by arguing, amongst other points, that "there is abundant testimony and evidence establishing, without question, that the beam should have been secured and was not adequately secured..., that the piece of wood ... was supposed to have been secured in between

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the two beams, but it wasn't, that is why it fell.” (Jonathan D. Moran, Esq., Affirmation in Reply, ¶¶ 3 & 5)

LEGAL ANALYSIS

The facts in this action alleged by plaintiff center around a falling object at a construction site and is referred to as a “falling object” case in the case law. The question posed is whether Labor Law § 240(1) applies herein.

Labor Law § 240(1) states in pertinent part:

All contractors and owners and their agents, ... in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, **and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed.** (emphasis added)

The Court of Appeals, in the case of *Nicometi v The Vineyards of Fredonia, LLC*, 25 NY3d 90, 96-97 [2015], set out the principles to determine whether an injured plaintiff may invoke the protections of Labor Law § 240(1)

Section 240 (1) aims to protect workers and to impose the responsibility for safety practices on those best situated to bear that responsibility. To achieve that goal, the statute imposes absolute liability where the failure to provide [proper] protection is a proximate cause of a worker's injury.

Nevertheless, it is settled that the extraordinary protections of the statute in the first instance apply only to a narrow class of dangers. More specifically, Labor Law § 240 (1) relates only to ‘special hazards’ presenting ‘elevation-related risk[s]’. Liability may, therefore, be imposed under the statute only where the plaintiff's injuries were the direct consequence of a failure to provide adequate protection against a risk arising from a physically significant elevation differential.

Consequently, the protections of Labor Law § 240 (1) do not encompass *any and all* perils that may be connected in some tangential way with the effects of gravity. Rather, liability [remains] contingent upon the existence of a hazard contemplated in section 240 (1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein. Moreover, section 240 (1) is not applicable unless the plaintiff's injuries result from the elevation-related risk and the inadequacy of the safety device. (internal quotation marks and citations omitted)

Initially, plaintiff presents a gravity-related accident. Neither the defendants nor the third-party defendant deny this characterization. However, an issue of fact still remains as to whether the wood piece that plaintiff encountered fell from above “and should have been secured and was not adequately secured” as plaintiff alleges, or another way; defendants allege that there

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are several versions as to how the incident occurred, one being that plaintiff caused his own injuries by running into the wooden piece himself. (Deposition of M. Okunov, NYSCEF 236, 47:23-25, 48:2-7, "He (plaintiff) said that he was working, installing, I believe, 2 by 4s onto a column, or maybe taking them, I don't remember exactly what he said, and that he got up, and turned around to go get something, and he walked into a 2 by 4 cross brace that is typically used to brace the Titan deck, and hit himself in the forehead. I mean —"). The court notes there is no plaintiff's expert's affidavit challenging the defendant's expert's assertion that the accident could not physically happened the way described by the plaintiff). There being an issue of fact, plaintiff's motion sequence # 8 is DENIED.

Motion Sequence # 9

Defendant 302 Broadway's motion sequence no. 9 alleges that partial summary judgment should be granted in its favor regarding plaintiff's Labor Law § 200 cause of action as "[d]efendants were not negligent, did not create the alleged defective condition and did not control the means or methods of work that caused Plaintiff's injury." (Aaron T. Smallets, Esq., Affirmation in Support of Defendants' Partial Motion For Summary Judgment, ¶ 3) "As for Plaintiff's § 241(6) claim, Plaintiff failed to provide an applicable Industrial Code, and Plaintiff's alleged violations were not particularized as is required." (*Id.*, at ¶ 4)

As indicated above, no opposition has been filed in connection to motion sequence # 9. Therefore 302 Broadway's motion sequence # 9 is GRANTED, and plaintiff's Labor Law §§ 200 & 241(6) causes of action against 302 Broadway are DISMISSED.

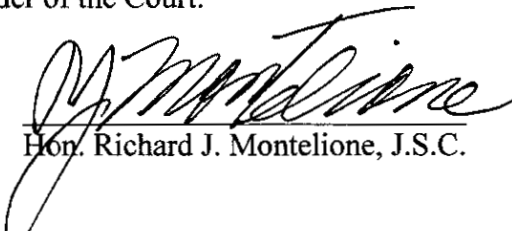
Based on the foregoing, it is

ORDERED, that Plaintiff Victor Alejandro Pazos Vera's motion sequence no. 8 seeking summary judgment in his favor regarding plaintiff's Labor Law § 240(1) is **DENIED**; and it is further

ORDERED, that Defendant 302 Broadway LLC's motion sequence no. 9 seeking partial summary judgment in its favor is **GRANTED**, and plaintiff's Labor Law §§ 200 and 241(6) causes of action against defendant 302 Broadway LLC is **DISMISSED**; and it is further

ORDERED, that any further relief requested herein has been considered and **DENIED**.

This constitutes the decision and order of the Court.


Hon. Richard J. Montelione, J.S.C.

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KINGS COUNTY CLERK
FILED